

[*Bunn v. MMR/Foley*](#), 89-ERA-5 (Sec'y Aug. 2, 1989)

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U.S. DEPARTMENT OF LABOR

SECRETARY OF LABOR
WASHINGTON, D.C.

DATE: August 2, 1989 CASE NO. 89-ERA-00005

IN THE MATTER OF

RICK W. BUNN,
COMPLAINANT,

v.

MMR/FOLEY, RESPONDENT.

BEFORE: THE SECRETARY OF LABOR

ORDER TO SUBMIT SETTLEMENT AGREEMENT

Administrative Law Judge (ALJ) Robert J. Feldman submitted a Final Order of Dismissal to me on January 26, 1989, in this case arising under the employee protection provision of the Energy Reorganization Act of 1974, as amended (ERA), 42 U.S.C. § 5851 (1982). The ALJ's order states that the parties did not appear at the re-scheduled bearing on January 6, 1989, and that Complainant's counsel represented that the case had been settled.

No copy of the settlement agreement is in the record, and it appears that the agreement was not submitted to or reviewed by the ALJ. In whistleblower cases under the ERA which are settled, it is error for an ALJ to dismiss a case without reviewing the

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settlement and making a recommendation of whether the settlement is fair, adequate and reasonable. 42 U.S.C. § 5851(b)(2)(A); 29 C.F.R. § 24.6(a). The Secretary has held that such a case cannot be dismissed unless the Secretary finds that the settlement is fair, adequate and reasonable.¹ *Macktal v. Brown & Root Inc.*, Case No. 86-ERA-23, Order to Submit Settlement Agreement issued May 11, 1987, slip op. at 2; *Johnson v. Transco*

Products, Case No. 85-ERA-7, issued August 8, 1985, slip op. at 1; *Chan Van Vo v. Carolina Power and Light Co.*, Case No. 85-ERA- 3, issued April 12, 1985, slip op. at 1. Although it is not necessary that the settlement agreement be part of the final order, as the Secretary explained in *Macktal v. Brown. Root*, "[w]here a settlement is not fair and equitable to a complainant, I cannot approve it for to do so would be an abdication of the responsibility imposed upon me by Congress to effectuate the purposes of section 5851, which is to encourage the reporting of safety violations by prohibiting economic retaliation against employees reporting such violatins [sic]." Slip op. at 2.

In the interest of judicial economy, rather than remand this matter to the ALJ to review the settlement and submit a new recommended decision, the parties are ordered to submit a copy of the settlement agreement to me for review. If all the parties, including the Complainant individually, have not signed the settlement agreement itself, the parties shall submit a certification or stipulation, signed by all the parties to the agreement, including the Complainant individually, demonstrating their informed consent of the agreement. The agreement should be submitted within thrity days of receipt of this order.

SO ORDERED.

Elizabeth Dole
Secretary of Labor Washington, D.C.

[ENDNOTES]

¹Section 5851(b)(2)(A) of the ERA provides in pertinent part that "the Secretary shall, unless the proceeding on the complaint is terminated by the Secretary on the basis of a settlement entered into by the Secretary . . . issue an order either providing the relief prescribed by subparagraph (B) or denying the complaint." (emphasis added).